



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 10

1200 Sixth Avenue, Suite 900
Seattle, WA 98101-3140

DEC 20 2012

OFFICE OF
AIR, WASTE AND TOXICS

Elizabeth Druback
Oregon Department of Environmental Quality
400 East Scenic Drive, Suite 307
The Dalles, Oregon 97058

Re: RCRA Landfill
Lockheed-Martin Facility
The Dalles, Oregon
ORD 05222 1025

Dear Ms. Druback:

This letter is in response to your email of November 26, 2012 and recent discussions between our agencies regarding the RCRA Landfill at the Lockheed-Martin facility located in The Dalles, Oregon. You requested that the U.S. Environmental Protection Agency, Region 10 (EPA) provide clarification on the regulatory requirement to obtain a treatment permit for this unit. This clarification is based on RCRA regulations that establish whether the unit is a closed landfill as originally permitted or is now an active treatment waste pile.

The record for the Lockheed-Martin facility demonstrates that:

- RCRA originally applied to a waste pile containing aluminum potliner at the Lockheed Martin facility.
- Wastes in the unit are as-generated K088. The unit does not contain remediation waste.
- The unit was certified closed with waste in place as a RCRA hazardous waste landfill in 1989.
- A RCRA post-closure care permit for the closed hazardous waste landfill was issued in 2000.
- The Part A and Part B permit applications and the RCRA post-closure permit identify the unit as hazardous waste disposal landfill.
- In-situ treatment of hazardous waste within the closed landfill was conducted from at least 2004 through 2011.

RCRA requires a permit for the treatment, storage, and disposal of any hazardous waste [40 CFR §270.1(c)]. An operating permit is required during the active life of the unit. Note that the requirement to obtain a permit for treatment of hazardous waste applies even in the case of treatment necessitated by an immediate response action; 40 CFR §270.1(c)(3)(ii) requires that any person who continues or initiates hazardous waste treatment after the immediate response is over is subject to the requirement to have a permit.

Parts 264 and 270 of RCRA do not provide for or anticipate that treatment will occur after closure. Under 40 CFR §264.113(a), within 90 days after receiving the final volume of hazardous waste, owners or operators must treat, remove from the facility, or dispose of on-site all hazardous waste in accordance with the approved closure plan. There are no provisions for treating waste after disposal.

40 CFR §§270.14 through 270.19 specify the RCRA permit application requirements. Information relevant to and required for waste treatment is found only in the regulatory sections specific to tanks, surface impoundments, waste piles, incinerators, land treatment facilities, boilers and industrial furnaces, and miscellaneous units. [40 CFR §§270.16 through 270.20, 270.22, and 270.23] The permit application requirements for hazardous waste landfills [40 CFR §270.21] do not include any provisions for conducting treatment in a landfill.

Information required in an application for a permit to conduct treatment in a waste pile includes, among other things:

- Chemical and physical analyses of the hazardous waste, including all information which must be known to treat or dispose of the waste properly. [§270.14(b)(2)]
- Details of the treatment process and equipment used, and the nature and quality of residuals. [§270.18(e)]
- A description of how hazardous waste residues will be removed from the waste pile at closure. For any waste not to be removed from the waste pile upon closure, the owner/operator must submit detailed plans and an engineering report describing how §264.310(a) and (b) (requirements for final closure of a landfill) will be complied with. This information is to be included in the closure plan and, where applicable, post-closure plan for the waste pile. [§270.18(h)]. There is no regulation allowing treatment in a waste pile following closure.

Based upon the record and the regulatory distinctions between *treatment* and *disposal*, and *closure* and *post-closure* discussed above, EPA has concluded that:

- The owner/operators' activities at the "RCRA landfill" beginning in 2004 constitute treatment of hazardous waste.
- The unit referred to in the permit as the "RCRA landfill" is a waste pile where treatment is and has been conducted.
- The active life of the facility was recommenced when treatment began; neither the facility nor the unit remains closed under RCRA.
- An application for an operating permit for the waste pile or a closure plan is required. In either case, compliance with all currently applicable regulations is required.
 - Treatment in the waste pile can be performed only under an operating permit. Treatment activities must be in accordance with the design and operating requirements specified in 40 CFR Part 264 Subpart L.
 - Closure of the waste pile must be accomplished by removal and decontamination of all waste residues, contaminated containment system components, contaminated subsoils, and structures and equipment. Alternatively, the waste pile may be closed with waste in place as a landfill.

- If the owner or operator finds that not all contaminated subsoils can be practicably removed or decontaminated, he must close the facility and perform post-closure care in accordance with the closure and post-closure care requirements that apply to landfills (40 CFR §264.310). [40 CFR §264.258]

With regard to your November 26, 2012 email, you attached three documents to support DEQ's interpretation that in-situ treatment in a landfill does not constitute "placement" for purposes of RCRA's land disposal restrictions. EPA agrees that in-situ treatment of remediation waste in an Area of Contamination does not constitute "placement." However, EPA has clearly distinguished between remediation waste and as-generated waste. For example, the preamble to the Hazardous Remediation Waste Management Requirements (63 FR 65874, November 30, 1998) provides an in-depth explanation of why EPA regulates as-generated waste differently from remediation waste. Since the Lockheed-Martin waste pile contains as-generated waste, the references you have provided are not applicable.

If you have any questions regarding these clarifications, please contact me by phone at (206)553-1756 or by email at fisher.carla@epa.gov.

Sincerely,



Carla Fisher
RCRA Corrective Action and Permits Team
Office of Air, Waste and Toxics

